

1 exemption from the annual tax for banks and
2 savings associations and revising application
3 of the exemption; exempting insurers from the
4 annual tax; repealing s. 199.104, F.S., which
5 provides a credit against the annual tax for
6 banks and savings associations; repealing s.
7 220.68, F.S., which provides a credit against
8 the franchise tax imposed on banks and savings
9 associations based on intangible tax paid;
10 creating s. 199.233, F.S.; specifying the
11 period for which the Department of Revenue may
12 assess intangible personal property taxes when
13 a taxpayer voluntarily self-discloses
14 liability; amending s. 199.282, F.S.; revising
15 the penalty for late filing of an annual
16 intangible tax return; providing a limitation
17 on combined delinquency and late filing
18 penalties; revising the penalty for omitting or
19 undervaluing property on an annual return;
20 amending s. 199.292, F.S.; revising the
21 distribution of intangible tax revenues;
22 amending s. 220.02, F.S., relating to order of
23 credits against the corporate income tax or
24 franchise tax, and s. 624.509, F.S., relating
25 to the insurance premium tax; conforming
26 language; providing application; providing
27 effective dates.

28
29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsections (13), (14), and (15) are added
2 to section 199.023, Florida Statutes, to read:

3 199.023 Definitions.--As used in this chapter:

4 (13) "Ministerial function" means an act the
5 performance of which does not involve the use of discretion or
6 judgment.

7 (14) "Processing activity" means an activity
8 undertaken to administer or service intangible personal
9 property in accordance with such terms, guidelines, criteria,
10 or directions as are provided solely by the owner of the
11 property. Methods, systems, or techniques chosen by the
12 processor to implement such terms, guidelines, criteria, or
13 directions are not considered the exercise of management or
14 control.

15 (15) "Investment adviser" means any person who, for
16 compensation, engages all or part of his or her time, directly
17 or indirectly, or through publications or writings, in the
18 business of advising others as to the value of securities or
19 as to the advisability of investing in, purchasing of, or
20 selling of securities, or who, for compensation and as part of
21 his or her regular business, issues or promulgates analyses or
22 reports concerning securities.

23 Section 2. Section 199.052, Florida Statutes, is
24 amended to read:

25 199.052 Annual tax returns; payment of annual tax.--

26 (1) An annual intangible tax return must be filed with
27 the department by every corporation authorized to do business
28 in this state or doing business in this state and by every
29 person, regardless of domicile, who on January 1 owns,
30 controls, or manages intangible personal property which has a
31 taxable situs in this state. For purposes of this chapter,

1 "control" or "manage" does not include any ministerial
2 function or any processing activity. The return shall be due
3 on June 30 of each year. It shall list separately the
4 character, description, and just valuation of all such
5 property.

6 (2) No person shall be required to pay the annual tax
7 in any year when the aggregate annual tax upon the person's
8 intangible personal property, after exemptions, would be less
9 than \$60~~\$5~~. In such case, an annual return is not required
10 unless the taxpayer is a corporation, a banking organization
11 claiming the exemption provided in s. 199.185(1)(i), or an
12 agent or fiduciary of whom the department requires an
13 informational return. Agents and fiduciaries shall report for
14 each person for whom they hold intangible personal property if
15 the aggregate annual tax on such person is \$60 or more ~~than~~
16 ~~\$5~~.

17 (3) A corporation having no intangible tax liability,
18 and required to file an annual report pursuant to s. 607.1622,
19 is not required to file the annual intangible tax return
20 required by this section.

21 (4) A husband and wife may file a joint return with
22 regard to all intangible personal property held jointly or
23 individually by them. They shall then be jointly liable for
24 the payment of the annual tax.

25 (5) The trustee of a Florida-situs trust is primarily
26 responsible for returning the trust's intangible personal
27 property and paying the annual tax on it. The trust's
28 beneficiaries, however, may individually return their
29 equitable shares of the trust's intangible personal property
30 and pay the tax on such shares, in which case the trustee need
31 not return such property or pay such tax, although the

1 department may require the trustee to file an informational
2 return.

3 (6) Each Florida resident with a beneficial interest,
4 as defined in s. 199.023(7), in a foreign-situs trust, that
5 is, a trust with situs outside of this state, is primarily
6 responsible for returning the resident's equitable share of
7 the trust's intangible personal property and paying the annual
8 tax on it. The trustee of a foreign trust may return and pay
9 the tax on the equitable shares of all Florida residents
10 having beneficial interests, in which case the residents need
11 not return such property or pay such tax.

12 (7) The personal representative or curator of a
13 Florida estate is primarily responsible for returning the
14 estate's intangible personal property and paying the annual
15 tax on it. The heirs or devisees, however, may individually
16 return their equitable shares of the estate's intangible
17 personal property and pay the tax on such shares, in which
18 case the personal representative or curator need not return
19 such property or pay such tax, although the department may
20 require the personal representative or curator to file an
21 informational return.

22 (8) The guardian of the property of a Florida
23 incompetent shall return the incompetent's intangible personal
24 property and pay the annual tax on it. The custodian of a
25 Florida minor under a gifts to minors or similar act shall
26 return the minor's intangible personal property which is
27 subject to the custodianship and pay the annual tax on it.

28 (9) Where an agent has control or management of
29 intangible personal property, the principal is primarily
30 responsible for returning such property and paying the annual
31 tax on it, but the agent shall return such property on behalf

1 of the principal and pay the annual tax on it if the principal
2 fails to do so. The department may in any case require the
3 agent to file an informational return.

4 (10) An affiliated group of corporations may elect to
5 make a consolidated return for any year. The election shall
6 be made by timely filing a consolidated return. Once made, an
7 election may not be revoked, and it is binding for the tax
8 year. The mere making of a consolidated return shall not in
9 itself provide a business situs in this state for intangible
10 personal property held by a corporation. The fact that
11 members of an affiliated group own stock in corporations which
12 do not qualify under the stock ownership requirements as
13 members of an affiliated group shall not preclude the filing
14 of a consolidated return on behalf of the qualified members.
15 Where a consolidated return is made, intercompany accounts,
16 including the capital stock of an includable corporation,
17 other than the parent, owned by another includable
18 corporation, shall not be subject to annual taxation. However,
19 capital stock and other intercompany accounts of a
20 nonqualified member of the affiliated group shall be subject
21 to annual tax. Each consolidated return shall be accompanied
22 by documentation identifying all intercompany accounts and
23 containing such other information as the department shall
24 require. Failure to timely file a consolidated return shall
25 not prejudice the taxpayer's right to file a consolidated
26 return, provided that the failure to file a consolidated
27 return is limited to 1 year and the taxpayer's intent to file
28 a consolidated return is evidenced by the taxpayer having
29 filed a consolidated return for the 3 years prior to the year
30 the return was not timely filed.

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1 (11) The return filed by each banking organization
2 shall set out the character, description, and just valuation
3 by category of all intangible personal property which is
4 issued in or arises out of international banking transactions
5 and which is owned by the banking organization.

6 (12) Securities held in margin accounts by a security
7 broker not acting as a fiduciary shall be returned, and the
8 annual tax on such securities shall be paid, by the customer
9 owning them. The security broker shall not be required to
10 return or pay the tax on such securities.

11 (13) Except as otherwise provided in this section, the
12 owner of intangible personal property is liable for the
13 payment of annual tax on it, and any other person required to
14 return such property is liable for the tax if the owner fails
15 to pay it.

16 (14) The annual intangible tax return shall include
17 language permitting a voluntary contribution of \$5 per
18 taxpayer, which contribution shall be transferred into the
19 Election Campaign Financing Trust Fund. A statement providing
20 an explanation of the purpose of the trust fund shall also be
21 included.

22 (15) If a bank or savings association, as defined by
23 s. 220.62, acts as a trustee of a trust, the bank or savings
24 association shall not be required to return and pay the annual
25 tax on intangible personal property held by the trust. If a
26 bank or savings association, as defined by s. 220.62, acts as
27 a fiduciary or agent of a trust other than as a trustee,
28 intangible personal property of the trust shall not have
29 taxable situs in this state pursuant to s. 199.175 solely by
30 virtue of the management or control of the bank or savings
31 association. For purposes of this chapter, where a bank or

1 savings association, as defined by s. 220.62, is the trustee
2 of a trust, the trust shall not be considered a Florida-situs
3 trust and each Florida resident with a beneficial interest, as
4 defined by s. 199.023(7), shall be responsible for returning
5 the resident's equitable share of the trust's intangible
6 personal property and paying the annual tax on it.

7 (16) If an investment adviser does not own but has
8 discretionary authority to invest moneys on behalf of a
9 principal, the investment adviser shall not be required to
10 return and pay the annual tax on intangible personal property
11 with respect to the assets the adviser purchases with such
12 funds of the principal. If an investment adviser acts as a
13 fiduciary or an agent of a principal, intangible personal
14 property of the principal shall not have taxable situs in this
15 state pursuant to s. 199.175 solely by virtue of the
16 management or control of that property by the investment
17 adviser.

18 Section 3. Effective July 1, 2000, subsection (11) of
19 section 199.052, Florida Statutes, is repealed, and subsection
20 (2) of said section, as amended by this act, is amended to
21 read:

22 199.052 Annual tax returns; payment of annual tax.--

23 (2) No person shall be required to pay the annual tax
24 in any year when the aggregate annual tax upon the person's
25 intangible personal property, after exemptions, would be less
26 than \$60. In such case, an annual return is not required
27 unless the taxpayer is a corporation, ~~a banking organization~~
28 ~~claiming the exemption provided in s. 199.185(1)(i),~~ or an
29 agent or fiduciary of whom the department requires an
30 informational return. Agents and fiduciaries shall report for
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1 each person for whom they hold intangible personal property if
2 the aggregate annual tax on such person is \$60 or more.

3 Section 4. Effective July 1, 2000, paragraph (a) of
4 subsection (1) and paragraph (b) of subsection (2) of section
5 199.175, Florida Statutes, are amended to read:

6 199.175 Taxable situs.--For purposes of the annual tax
7 imposed under this chapter:

8 (1) Intangible personal property shall have a taxable
9 situs in this state when it is owned, managed, or controlled
10 by any person domiciled in this state on January 1 of the tax
11 year. Such intangibles shall be subject to annual taxation
12 under this chapter, unless the person who owns, manages, or
13 controls them is specifically exempt or unless the property is
14 specifically exempt. This provision shall apply regardless of
15 where the evidence of the intangible property is kept; where
16 the intangible is created, approved, or paid; or where
17 business may be conducted from which the intangible arises.
18 The fact that a Florida corporation owns the stock of an
19 out-of-state corporation and manages and controls such
20 corporation from a location in this state shall not operate to
21 give a taxable situs in this state to the intangibles owned by
22 the out-of-state corporation, which intangibles arise out of
23 business transacted outside this state.

24 (a) For the purposes of this chapter, "any person
25 domiciled in this state" means:

26 1. Any natural person who is a legal resident of this
27 state;

28 2. Any ~~bank or financial institution,~~ business,
29 business trust as described in chapter 609, company,
30 corporation, ~~insurance company,~~ partnership, or other
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1 artificial entity organized or created under the law of this
2 state, except a trust; or
3 3. Any person, including a trust, who has established
4 a commercial domicile in this state.
5 (2) Intangible personal property shall have a taxable
6 situs in this state when it is deemed to have a business situs
7 in this state and it is owned, managed, or controlled by a
8 person transacting business in this state, even though the
9 owner may claim a domicile elsewhere. This provision shall
10 apply regardless of where the evidence of the intangible is
11 kept or where the intangible is created, approved, or paid.
12 (b) Notwithstanding the provisions of this subsection:
13 1.a. Intangibles that are credit card or charge card
14 receivables or related lines of credit or loans shall be
15 deemed to have business situs in this state only when the debt
16 represented by such intangibles is owed by a customer who is
17 domiciled in this state.
18 b. The performance of ministerial functions relating
19 to, or the processing of, credit card or charge card
20 receivables in this state for the owner of such receivables is
21 not sufficient to support a finding that the owner is
22 transacting business in this state.
23 c. The term "credit card or charge card receivables"
24 does not include trade or service receivables as defined in s.
25 864 of the Internal Revenue Code of 1986, as amended.
26 2. An intangible owned by a real estate mortgage
27 investment conduit, a real estate investment trust, or a
28 regulated investment company, as those terms are defined in
29 the United States Internal Revenue Code of 1986, as amended,
30 shall not be deemed to have a taxable situs in this state
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1 unless such entity has its legal or commercial domicile in
2 this state.

3 3. The ownership of any interest in a participation or
4 syndication loan or pool of loans, notes, or receivables shall
5 not be sufficient to support a finding that the owner of such
6 interest is transacting business in this state. For the
7 purposes of this subparagraph, a participation or syndication
8 loan is a loan in which more than one lender is a creditor to
9 a common borrower, and a participation or syndication interest
10 in a pool of loans, notes, or receivables is an interest
11 acquired from the originator or initial creditor with respect
12 to the loans, notes, or receivables constituting the pool.

13 ~~4. Assets owned by a foreign insurance company, as~~
14 ~~defined in s. 624.06, shall not be deemed to have a business~~
15 ~~situs in this state if they are managed and controlled outside~~
16 ~~this state.~~

17 Section 5. (1) Subsections (1) and (5) of section
18 199.185, Florida Statutes, are amended, and subsection (8) is
19 added to said section, to read:

20 199.185 Property exempted from annual and nonrecurring
21 taxes.--

22 (1) The following intangible personal property shall
23 be exempt from the annual and nonrecurring taxes imposed by
24 this chapter:

25 (a) Money.

26 (b) Franchises.

27 (c) Any interest as a partner in a partnership, either
28 general or limited, other than any interest as a limited
29 partner in a limited partnership registered with the
30 Securities and Exchange Commission pursuant to the Securities
31 Act of 1933, as amended.

1 (d) Notes, bonds, and other obligations issued by the
2 State of Florida or its municipalities, counties, and other
3 taxing districts, or by the United States Government and its
4 agencies.

5 (e) Intangible personal property held in trust
6 pursuant to any stock bonus, pension, or profit-sharing plan
7 or any individual retirement account which is qualified under
8 s. 530, s. 401, or s. 408, or s. 408A of the United States
9 Internal Revenue Code, 26 U.S.C. ss. 530, 401, and 408, and
10 408A, as amended.

11 (f) Intangible personal property held under a
12 retirement plan of a Florida-based corporation exempt from
13 federal income tax under s. 501(c)(6) of the United States
14 Internal Revenue Code, 26 U.S.C., if the primary purpose of
15 the corporation is to support the promotion of professional
16 sports and the retirement plan is either a qualified plan
17 under s. 457 of the United States Internal Revenue Code or the
18 contributions to the plan, pursuant to a ruling by the United
19 States Internal Revenue Service, are not taxable to plan
20 participants until actual receipt or withdrawal by the
21 participant.

22 (g) Notes and other obligations, except bonds, to the
23 extent that such notes and obligations are secured by
24 mortgage, deed of trust, or other lien upon real property
25 situated outside the state.

26 (h) The assets of a corporation registered under the
27 Investment Company Act of 1940, 15 U.S.C. s. 80a-1-52, as
28 amended.

29 (i) All intangible personal property issued in or
30 arising out of any international banking transaction and owned
31 by a banking organization.

1 (j) Units of a unit investment trust organized under
2 an agreement or declaration of trust and registered under the
3 Investment Company Act of 1940, as amended, whose portfolio of
4 assets consists solely of assets exempt under this section.

5 (k) Interests in real estate mortgage securitizations,
6 including, without limitation, real estate mortgage investment
7 conduits (REMICs), financial asset securitization trusts
8 (FASITs), and other vehicles for collateralized mortgage
9 obligations, (REMIC) that are directly or indirectly secured
10 by or payable from notes and obligations that are in turn
11 secured by a mortgage, deed of trust, or other lien upon real
12 property situated in or outside of the state, including but
13 not limited to mortgage pools, participations, and derivatives
14 ~~and are held as investments by banks or savings associations~~
15 ~~in compliance with regulatory agency guidelines.~~

16 (l) One-third of the accounts receivable arising in
17 the ordinary course of a trade or business which are owned,
18 controlled, or managed by a taxpayer on January 1, 1999;
19 two-thirds of the accounts receivable owned, controlled, or
20 managed by a taxpayer on January 1, 2000; and all of such
21 accounts receivable owned, controlled, or managed by a
22 taxpayer on January 1, 2001. This exemption does not apply to
23 accounts receivable which arise outside the taxpayer's
24 ordinary course of trade or business. For the purposes of this
25 chapter, "accounts receivable" means a business debt which is
26 owed by another in the taxpayer's ordinary course of trade or
27 business and is not supported by negotiable instruments.
28 Accounts receivable include, but are not limited to, credit
29 card receivables, charge card receivables, credit receivables,
30 margin receivables, inventory or other floor plan financing,
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1 lease payments past due, conditional sales contracts, and
2 financing lease contracts.

3 (5) Those organizations ~~Every bank and savings~~
4 ~~association, as~~ defined in s. 220.62(1), (2), (3), or (4) or
5 any direct or indirect affiliate or subsidiary thereof are, ~~is~~
6 exempt from ~~5 mill~~ of the tax imposed by s. 199.032.

7 (8) Every insurer, as defined in s. 624.03, whether
8 the insurer is authorized or unauthorized as defined in s.
9 624.09, is exempt from the tax imposed by s. 199.032.

10 (2) The amendment to subsection (5) and the creation
11 of subsection (8) of s. 199.185, Florida Statutes, by this
12 section shall apply to taxes due on or after July 1, 1999.

13 Section 6. Effective for tax years beginning after
14 December 31, 1999, sections 199.104 and 220.68, Florida
15 Statutes, are repealed.

16 Section 7. Effective January 1, 1999, section 199.233,
17 Florida Statutes, is created to read:

18 199.233 Limitation on actions; voluntary
19 self-disclosure.--Notwithstanding the provisions of s. 95.091,
20 when a taxpayer voluntarily self-discloses a tax liability and
21 enters into an agreement on or after the effective date of
22 this section for the payment of said taxes, the maximum period
23 for which the taxpayer will be liable for any tax is 3 years,
24 beginning with calendar year 1998. For purposes of
25 administering this section, no liability for taxes due prior
26 to calendar year 1998 may be assessed after a taxpayer has
27 self-disclosed a liability pursuant to this section.

28 Section 8. Subsections (3) and (4) of section 199.282,
29 Florida Statutes, are amended to read:

30 199.282 Penalties for violation of this chapter.--
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1 (3)(a) If any annual or nonrecurring tax is not paid
2 by the due date, a delinquency penalty shall be charged. The
3 delinquency penalty shall be 10 percent of the delinquent tax
4 for each calendar month or portion thereof from the due date
5 until paid, up to a limit of 50 percent of the total tax not
6 timely paid.

7 (b) If any annual tax return required by this chapter
8 is not filed by the due date, a penalty of 10 ~~30~~ percent of
9 the tax due with the return shall be charged for each calendar
10 month or portion thereof during which the return remains
11 unfiled, up to a limit of 50 percent of the total tax due for
12 ~~each year or portion of the year during which the return~~
13 ~~remains unfiled.~~

14
15 For any penalty assessed under this subsection, the combined
16 total for all penalties assessed under paragraphs (a) and (b)
17 shall not exceed 10 percent per calendar month, up to a limit
18 of 50 percent of the total tax due.

19 (4) If an annual tax return is filed and property is
20 either omitted from it or undervalued, then a specific penalty
21 shall be charged. The specific penalty shall be 10 ~~30~~ percent
22 of the tax attributable to each omitted item or to each
23 undervaluation. No delinquency or late filing penalty shall be
24 charged with respect to any undervaluation.

25 Section 9. Effective January 1, 1999, subsection (3)
26 of section 199.292, Florida Statutes, is amended to read:

27 199.292 Disposition of intangible personal property
28 taxes.--All intangible personal property taxes collected
29 pursuant to this chapter shall be placed in a special fund
30 designated as the "Intangible Tax Trust Fund." The fund shall
31 be disbursed as follows:

1 (3) An amount equal to 35.7 ~~33.5~~ percent of the
2 remaining intangible personal property taxes collected shall
3 be transferred to the Revenue Sharing Trust Fund for Counties.
4 An amount equal to 64.3 ~~66.5~~ percent of the remaining taxes
5 collected shall be transferred to the General Revenue Fund of
6 the state.

7 Section 10. Effective July 1, 2000, subsection (10) of
8 section 220.02, Florida Statutes, is amended to read:

9 220.02 Legislative intent.--

10 (10) It is the intent of the Legislature that credits
11 against either the corporate income tax or the franchise tax
12 be applied in the following order: ~~those enumerated in s.~~
13 ~~220.68,~~ those enumerated in s. 631.719(1), those enumerated in
14 s. 631.705, those enumerated in s. 220.18, those enumerated in
15 s. 631.828, those enumerated in s. 220.181, those enumerated
16 in s. 220.183, those enumerated in s. 220.182, those
17 enumerated in s. 220.1895, those enumerated in s. 221.02,
18 those enumerated in s. 220.184, those enumerated in s.
19 220.186, and those enumerated in s. 220.188.

20 Section 11. Effective July 1, 2000, subsections (4),
21 (7), and (8) of section 624.509, Florida Statutes, are amended
22 to read:

23 624.509 Premium tax; rate and computation.--

24 (4) ~~The intangible tax imposed under chapter 199,~~The
25 income tax imposed under chapter 220, and the emergency excise
26 tax imposed under chapter 221 which are paid by any insurer
27 shall be credited against, and to the extent thereof shall
28 discharge, the liability for tax imposed by this section for
29 the annual period in which such tax payments are made. As to
30 any insurer issuing policies insuring against loss or damage
31 from the risks of fire, tornado, and certain casualty lines,

1 the tax imposed by this section, as intended and contemplated
2 by this subsection, shall be construed to mean the net amount
3 of such tax remaining after there has been credited thereon
4 such gross premium receipts tax as may be payable by such
5 insurer in pursuance of the imposition of such tax by any
6 incorporated cities or towns in the state for firefighters'
7 relief and pension funds and police officers' retirement funds
8 maintained in such cities or towns, as provided in and by
9 relevant provisions of the Florida Statutes. For purposes of
10 this subsection, payments of estimated income tax under
11 chapter 220 and of estimated emergency excise tax under
12 chapter 221 shall be deemed paid either at the time the
13 insurer actually files its annual returns under chapter 220 or
14 at the time such returns are required to be filed, whichever
15 first occurs, and not at such earlier time as such payments of
16 estimated tax are actually made.

17 (7) Credits and deductions against the tax imposed by
18 this section shall be taken in the following order: deductions
19 for assessments made pursuant to s. 440.51; credits for taxes
20 paid under ss. 175.101 and 185.08; credits for income taxes
21 paid under chapter 220, the emergency excise tax paid under
22 chapter 221 and the credit allowed under subsection (5), as
23 these credits are limited by subsection (6); ~~credits for~~
24 ~~intangible taxes paid under chapter 199;~~ all other available
25 credits and deductions.

26 (8) From and after July 1, 1980, the premium tax
27 authorized by this section shall not be imposed upon receipts
28 of annuity premiums or considerations paid by holders in this
29 state ~~and from and after July 1, 1991, the intangible tax~~
30 ~~imposed by chapter 199 shall not be imposed on assets equal to~~
31 ~~the statutory legal reserves of annuity products maintained by~~

1 ~~insurance companies on behalf of their holders~~ if the tax
2 savings derived are credited to the annuity holders. Upon
3 request by the Department of Revenue, any insurer availing
4 itself of this provision shall submit to the department
5 evidence which establishes that the tax savings derived have
6 been credited to annuity holders. As used in this subsection,
7 the term "holders" shall be deemed to include employers
8 contributing to an employee's pension, annuity, or
9 profit-sharing plan.

10 Section 12. For tax years beginning after December 31,
11 1999, no credit under s. 624.509(4), Florida Statutes, for
12 intangible tax imposed under chapter 199, Florida Statutes,
13 shall be available.

14 Section 13. Except as otherwise provided herein, this
15 act shall take effect July 1 of the year in which enacted.

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